

19-008.01 Grounds for Denial, Refusal to Renew, or Disciplinary Action:

19-008.01A The Department may deny or refuse to renew a mental health center facility license for failure to meet the requirements for licensure, including:

1. Failing an inspection specified in 175 NAC 19-005;
2. Having had a license revoked within the two-year period preceding an application; or
3. Any of the grounds specified in 175 NAC 19-008.01B.

19-008.01B The Department may take disciplinary action against a mental health center facility license for any of the following grounds:

1. Violation of any of the provisions of the Health Care Facility Licensure Act or 175 NAC 19;
2. Committing, permitting, aiding, or abetting the commission of any unlawful act;
3. Conduct or practices detrimental to the health or safety of a client or employee;
4. A report from an accreditation body sanctioning, modifying, terminating, or withdrawing the accreditation of the facility;
5. Failure to allow an agent or employee of the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure access to the facility for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of these departments;
6. Discrimination or retaliation against a client or employee who has submitted a complaint or information to the Department of Health and Human Services, the Department of Health and Human Services Finance and Support, or the Department of Health and Human Services Regulation and Licensure;
7. Discrimination or retaliation against a client or employee who has presented a grievance or information to the office of the state long term care ombudsman;
8. Failure to allow a state long term care ombudsman or an ombudsman advocate access to the facility for the purposes of investigation necessary to carry out the duties of the office of the state long term care ombudsman;
9. Violation of the Emergency Box Drug Act;
10. Failure to file a report of payment or action taken due to a liability claim or an alleged violation required by Neb. Rev. Stat. Section 71-168.02;

11. Violation of the Medication Aide Act; or
12. Failure to file a report of suspected abuse or neglect as required by Neb. Rev. Stat. Sections 28-372 and 28-711.

19-008.02 Procedures for Denial, Refusal to Renew or Disciplinary Action

19-008.02A If the Department determines to deny, refuse renewal of, or take disciplinary action against a license, the Department must send a notice to the applicant or licensee, by certified mail to the last address shown on its records. The notice must state the determination, including a specific description of the nature of the violation and the statute or regulation violated, and the type of disciplinary action pending.

19-008.02B The denial, refusal to renew, or disciplinary action must become final 15 days after the mailing of the notice unless the applicant or licensee, within this 15 day period, makes a written request to the Director for an informal conference or an administrative hearing.

19-008.02C Informal Conference

19-008.02C1 At the request of the applicant or licensee, the Department must hold an informal conference within 30 days of the receipt of the request. The conference must be held in person, or by other means, at the request of the applicant or licensee. If the pending action is based on an inspection, the Department's representative at the conference must not be the individual who did the inspection.

19-008.02C2 Within 20 working days of the conference, the Department representative must state in writing the specific reasons for affirming, modifying, or dismissing the notice. The representative must send a copy of the statement to the applicant or licensee by certified mail to the last address shown in the Department's records and a copy to the Director.

19-008.02C3 If the applicant or licensee successfully demonstrates at the informal conference that the deficiencies should not have been cited in the notice, the Department must remove the deficiencies from the notice and rescind any sanction imposed solely as a result of those cited deficiencies.

19-008.02C4 If the applicant or licensee contests the affirmed or modified notice, the applicant or licensee must submit a request for hearing in writing to the Director within five working days after receipt of the statement.

EFFECTIVE
01/01/01

NEBRASKA HEALTH AND HUMAN SERVICES
REGULATION AND LICENSURE

175 NAC 19

19-008.02D When an applicant or a licensee contests the notice and requests a hearing, the Department must hold a hearing in accordance with the Administrative Procedures Act (APA) and with the Department's rules and regulations adopted and promulgated under the APA. Either party may subpoena witnesses, who must be allowed fees at the rate prescribed by Neb. Rev. Stat. sections 33-139 and 139.01.

19-008.02D1 On the basis of evidence presented at the hearing, the Director must affirm, modify, or set aside the determination. The Director's decision must:

1. Be in writing;
2. Be sent by registered or certified mail to the applicant or licensee; and
3. Become final 30 working days after mailing unless the applicant or licensee, within the 30-day period, appeals the decision.

19-008.02D2 An applicant or a licensee's appeal of the Director's decision must be in accordance with the Administrative Procedure Act.